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## ARIZONA ATTORNEY GENERAL

Opinion No. 64-21

R-165

October 2, 1964

REQUESTED BY: CHARLES N. RONAN  
Maricopa County Attorney

OPINION BY: ROBERT W. PICKRELL  
The Attorney General

QUESTION: Is there any conflict between our state laws and the literacy section of the Civil Rights Act of 1964? And if there is such a conflict, how will this affect County, State and Federal elections?

ANSWER: Yes. See body of opinion.

There are two Arizona statutes which seem to be in conflict with the Civil Rights Act of 1964.

A.R.S. § 16-101 (4) lists as one of the qualifications for voting registration that the elector: "is able to read the Constitution of the United States in the English language in a manner showing that he is neither prompted nor reciting from memory, unless prevented from doing so by physical disability." Subdivision (5) of the same statute reads: "(elector) is able to write his name, unless prevented from so doing by physical disability."

In addition, A.R.S. § 16-921 (7) lists as the final ground for challenging a voter: "that not being prevented by physical disability from doing so, he is unable to read the Constitution of the United States in the English language in such manner as to show he is neither prompted nor reciting from memory, or he is unable to write his name."

The apparent conflicts between the above statutes and the Civil Rights Act of 1964 arise in Sec. 101(C) of said Act: "No person acting under color of law shall employ any literacy test as a qualification for voting in any Federal election unless (1) such test is administered to each individual and is conducted wholly in writing, and (2) a certified copy of the test and of the answers

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given by the individual is furnished to him within twenty-five days of the submission of his request..." (emphasis supplied).

The first apparent conflict between the Federal Act and the Arizona Statutes is that the former specifies that any literacy test which is given must be in writing and a certified copy of the test and the individual's answers must be made available to said individual upon request. The Arizona Statutes do not specify a written test in either the registration or challenging situations, which traditionally throughout Arizona have been orally conducted. Another confliction is that although the A.R.S. registration statute would necessarily apply to all registrants, the challenging statute seems to offer grounds for challenging the right to vote of "an individual voter" and therefore is not a test applied to "each individual" as required by the Civil Rights Act of 1964.

We must next determine to what elections the Federal law was intended to apply. The Civil Rights Act, *supra*, specifically applies to only "Federal elections," and Sec. 101(C)(3)(f) of the Act defines this term: (f)"... the words 'Federal election' shall mean any general, special, or primary election held solely or in part for the purpose of electing or selecting any candidate for the office of President, Vice President, presidential elector, Member of the Senate, or Member of the House of Representatives." A.R.S. § 16-701 provides that, "On the first Tuesday after the first Monday in November of every even-numbered year, a general election shall be held for the election of representatives in congress, members of the legislature, and state, county, and precinct officers." and A.R.S. § 16-702 states that, "On the eighth Tuesday prior to a general or special election at which candidates for public office are to be elected, a primary election shall be held." A.R.S. § 16-844 provides for the form of ballot to be used in the general election and specifies the Federal offices to be listed for election. There can be no question but that our general election is a Federal election. State vs. George F. Senner, 92 Ariz. 243, 375 P2d 728.

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It appears clear that the Civil Rights Act of 1964 intended to establish the only permissible form of literacy tests which a state may use in any election held within said state wherein the President or Vice President of the United States or any United States Congressman is being selected. Thus, in states such as Tennessee wherein state and local elections are held in off-years from that of national elections, for said off-year elections Tennessee may establish its own voting qualifications relating to literacy. However, as in Arizona where our local officials are selected in the same election in which we vote for the Presidency and Vice-Presidency of our country and for U.S. Congressmen, the federal literacy tests control the registration and challenging procedures, relating to literacy, employed for said election.

The federal authority for imposing such a literacy provision upon the states as contained in the Civil Rights Act, comes directly from the United States Constitution, Article I, Section 4: "The times, places, and manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by law make or alter such Regulations, except as to the Places of choosing Senators." (emphasis supplied). By passage of the Civil Rights Act of 1964 Congress has exercised this power to regulate Congressional elections. And, in turn, said regulation has become the supreme law of the land and must preempt any conflicting state legislation. U.S. Constitution, Article VI: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; shall be the supreme Law of the land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or laws of any State to the Contrary notwithstanding."

One further area of possible conflict exists between the literacy provision of the Civil Rights Act of 1964 and the State code sections heretofore referred to. This provision is Sec. 101(C)(b) which says, "If in any such proceeding literacy is a relevant fact there shall be a rebuttable presumption that any person who has not been adjudged an incompetent and who has completed the

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sixth grade in public school.... possesses sufficient literacy....to vote in any Federal Election." However, by the use of the words "rebuttable presumption," in the Federal Act, the Federal and State provisions should be sufficiently similar so as not to raise a Constitutional issue. For example, the Recorder could ask the registrant the qualifying questions printed in A.R.S. § 16-101 (except 4 and 5), and in addition thereto, the Recorder could ask him if he completed the sixth grade in public school. If so, he is entitled to be registered unless a general written test as heretofore discussed is required of all seeking registration.

In summary, it is the opinion of this office that registration for a "Federal Election" in Arizona must conform with the Civil Rights Act of 1964, and the application of A.R.S. § 16-101 must be read as modified by said Federal Act to provide for a written literacy test with a copy of said test and the individual's answers made available to him upon request, if any such written test is given. As for A.R.S. § 16-921 (7), since this statute was capable of arbitrary application by a challenger to selected voters, it must also be read as modified by the Civil Rights Act of 1964 which specifies that any such voting literacy test must be equally applied to each and every voter in writing.

Finally, the people of the State can change this situation if they desire to. Their Legislature is empowered by Article 7, sections 10 and 11, Arizona Constitution to enact primary and general election laws. The Legislature has done this by enacting Title 16, Arizona Revised Statutes. This power appears limited by the Arizona Constitution to the present Federal Election and State Election concept; however, if the people of the State desired, they could amend the Constitution and provide the Legislature with the authority to create off-year State elections, such as Tennessee has, thus creating two separate elections: one Federal Election, for Federal officers, and one State Election for State and County officers. If no change in the present law is made, Federal elections

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and State elections shall remain the same election and Congress can continue to legislate the "time, places, and manner" of our State Election.

Respectfully submitted,

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